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Municipal Waste Energy Price Support Loan Program; Proposed Rulemaking and Notice of Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 485

[Docket No. CAS-RM-80-121]

Municipal Waste Energy Price Support Loan Program; Proposed Rulemaking and Notice of Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to establish a new Part 485 for program rules for the Municipal Waste Energy Price Support Loan Program under Title II, Subpart B of the Energy Security Act (ESA), Pub. L. 96-294. Today's notice is to comply with the statutory requirements for three specific rules to be promulgated within 90 days of enactment of ESA. These rules establish necessary comonents for determining the maximum amount of price support loans. These components are the "standard support price" and "the manner of determining the fuel displaced * * * and the price of the fuel displaced." DOE expects to publish in the near future another notice proposing program rules covering remaining components of the price support loan program.

DATES: Written comments must be received by October 20, 1980, 4:30 p.m., e.d.t. A public hearing will be held on October 14, 1980 beginning at 9:30 a.m., local time. Request to speak at the public hearing must be received on or before September 29, 1980.

ADDRESSES: Written comments and requests to speak should be addressed to Carol Snipes, Department of Energy, Hearings and Dockets, Mail Stop 6B-025, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: (202) 252-9319. The hearing will be held in Room 3000A, 12th and Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

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I. Background

The Department of Energy (DOE) today begins the rulemaking process to implement the Municipal Waste Energy Price Support Loan Program under Title II, Subtitle B, of the Energy Security Act (ESA), (Pub. L. 96-294). Title II, Subtitle B, authorizes DOE to provide construction loans, loan guarantees, price support loans, and price guarantees. DOE proposes to establish a new Part 485 for price support loan rules under the ESA. Today's notice deals with the rules required under section 234(d) of the ESA to determine certain factors in the amount of a price support loan. These factors are the "standard support price" and "the manner of determining the fuel displaced . . . and the price of fuel displaced." DOE anticipates publishing, as soon as possible, another notice proposing program rules covering remaining components of the price support loan program.

The Municipal Waste Energy Price Support Loan Program is separate from the municipal waste reprocessing demonstration program under section 237 of the ESA and Section 20 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Nonnuclear Act), as amended, 42 U.S.C. § 5919-5920. Section 20 of the Nonnuclear Act and Section 237 of ESA authorized price supports for projects, which have not been demonstrated at a commercial scale, to obtain technical, economic, and other information about innovative or underutilized technologies. Section 234 of ESA supports waste-to-energy projects which have been demonstrated at a commercial scale and is intended to accelerate displacement of conventional fossil fuels.

The scope of the program is governed in part by the definition of "municipal waste" in Section 203(14) of the ESA which excludes "hazardous waste," as determined by the Secretary. In amplifying the definition of "municipal waste" in proposed section 485.02, DOE is proposing to exclude, as hazardous, the hazardous wastes specifically listed by the Environmental Protection Agency in 40 CFR, Part 26] under the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580), as well as other waste deemed hazardous by DOE on a case-by-case basis.

II. General Description of Price Support Loans

A price support loan is a lending device which enables a "municipal waste energy project" to borrow against revenue increase anticipated in future years. The loan payments can be used to offset annual operating costs including debt service and operation and maintenance. By improving the early year project economics, price support loans encourage projects which increase production and sales of waste derived energy over current levels. Inasmuch as the amount of the loan is based on the amount of waste derived energy produced and sold or used, and the type and cost of fuel displaced, the price support loan is a device which rewards displacement of fossil fuels.

Under section 234 of the ESA, loan funds are disbursed on an annual basis for a maximum term of five consecutive years for "existing municipal waste energy projects" and for a maximum term of seven consecutive years for "new municipal waste energy projects." Repayment commences a year after receipt of the last price support loan payment.

III. Determining the Maximum Amount of a Price Support Loan

The maximum amount of the loan payment (i.e., financial assistance disbursed) in the first year is based on the amount of waste derived energy produced and sold or used by a project, as measured in millions of British Thermal Units (MMBtu's). This amount of energy is multiplied by the value of the price support per MMBtu i.e., unit value of support. A particular unit value of support is set for each project and is calculated as the difference between the standard support price, established pursuant to Section 234(d)(4) of the ESA, and the cost of the conventional fossil fuel which is displaced by the waste derived energy. However, under Section 234 (a)(3)(A)(1) the maximum unit value of support may not exceed $2.00 per MMBtu's. After the first year, the maximum amount of loan payment declines in each succeeding year. Each successive year the amount of the loan is calculated by multiplying the product of the unit value of support times the amount of fuel displaced by a fraction whose denominator is the number of years in the loan term, and the

numerator is the number of years in the loan term minus the number of years which have elapsed since the date of the first year's payment.

Where No. 6 fuel oil or a higher grade of pertroleum is displaced by waste derived energy, the maximum amount of the price support payment attributable to the displaced oil will be increased by 25 percent. The adjustment will be based on the proportion of oil in the fuel mix that is displaced by waste derived energy.

A. Establishing the Standard Support Price

Section 234(d)(4)(A) of the ESA defines the term "standard support price" as "the average price (per million Btu's) for No. 6 fuel oil imported into the United States on the date of enactment of this Act." The ESA was enacted June 30, 1980. The method employed for arriving at an appropriate "standard support price" is not specified in the ESA. Because reported price data come from various souces and are not usually stated on a per million Btu basis, DOE decided to identify the per barrel price from the most suitable source of price data and to determine the equivalent price per million Btu's. DOE considered numerous sources of data regarding the price of imported No. 6 fuel oil.

Data Sources. (1) The first source of petroleum price data considered was the DOE Energy Information Administration (EIA), Office of Oil and Gas Statistics, Petroleum Marketing and Pricing Statistics Division. EIA prepares a number of documents which contain price and quality data on various fuels.

(a) One such document, the "Weekly Petroleum Status Report", provides only *weekly* spot market prices of No. 6 fuel oil. Moreover, it is limited to 1% sulfur content fuel. The prices are compiled from the "Oil Buyers Guide", an industry weekly oil production report. These prices do not include import duties and State or Federal taxes. The lack of specificity as to daily price and quality of the fuel made these data unsuitable.

(b) Another EIA publication, the "Monthly Energy Review", provides average retail and wholesale prices for No. 6 residual fuel oil with a range of sulfur contents. However, it does not differentiate between domestic and imported oil; furthermore, the June 30, 1980, data will not be published for at least 90 days from June 30. Therefore, it is not timely for use in preparing this proposed rule.

(c) EIA also collects and publishes information obtained monthly from major electric plants. This monthly report, entitled, "Cost and Quality of Fuels for Electric Utility Plants", contains quality, price, and volume data on certain types of fuel purchased by electric utilities. Some data are specific for No. 6 fuel oil, while other information is reported for residual fuel oil, of which approximately 95% is No. 6. However, here again, June 30, 1980 data will not be published for at least 90 days from June 30, and the report could not be used to determine a price for No. 6 fuel oil on June 30, 1980 for this proposal.

(2) Another source considered was data compiled by the Bureau of the Census, Foreign Trade Division, Trade Information Branch Publication No. FT 900–ADV–(80)–5 May, 1980. The Bureau's data could not be utilized because they do not give separate prices for No. 6 imported fuel oil.

All the above-mentioned data sources were rejected because they have one or more features which make them unacceptable under the terms of the ESA.

(3) The most suitable source of data considered was the price data published in "Platt's Oilgram Price Report," Vol. 58, No. 127, p. 6–A, July 1, 1980. These data best satisfies the statutory requirements. The July 1, 1980 "Platt's Oilgram Price Report," Which reports June 30, 1980 data, sets forth the estimated spot and contract cargo prices of No. 6 fuel oil with various grades of sulfur content. Platt's was the only timely data source, of which DOE was aware, which reported prices of No. 6 imported fuel oil on a daily basis. In addition, Platt's supplies separate data for spot and contract prices.

Platt's reports a variety of prices for No. 6 imported fuel oil. In deciding which prices to use for today's proposal, DOE made the following choices which are intended to achieve the general statutory purpose to stimulate production of "municipal waste energy" and displace use of conventional fossil fuels.

DOE proposes to base the "standard support price" on the average price of No. 6 imported fuel oil with a sulfur content of 0.3 percent. The sulfur content of municipal waste energy ranges from 0.2 to 0.5 percent, with an average sulfur content of 0.3 percent. Environmental standards in many areas of the country require the use of low-sulfur fuels which are more expensive than high-sulfur fuels. *See* the Environmental Assessment for the Urban Waste Technology Program announced in 44 FR 42110 (July 18, 1979). Municipal waste, because of its low sulfur content, can be substituted for these more expensive low sulfur fuels and, therefore, should be priced accordingly. To base the "standard support price" on less expensive, high sulfur fuel would reduce the incentive of a price support loan in those areas of the United States where use of more expensive, low sulfur fuels is required.

DOE also proposes to base the "standard support price" on contract rather than spot market prices. In general, contract prices are more stable and less susceptible to fluctuation as a result of marketplace anomalies. Contract prices are also reported without distortion of adjustments for entitlement benefits. The entitlements program serves as an equalizer for the cost of crude oil and was promulgated to alleviate the impact of the price differential between price controlled and free market prices of crude oil. The entitlements program is set forth in DOE's regulations at 10 CFR 211.67.

Btu Content of No. 6 Fuel. Section 234(d)(4)(A) of the Act and the conference report on the Act, at page 259, specify that the "standard support price" must be stated in a price per MMBtu's. DOE proposes to set the Btu content of one barrel of No. 6, imported fuel oil of 0.3 percent sulfur content at 6.11 MMBtu's. This figure was developed from data published by EIA.

As noticed above, EIA publishes a monthly report, entitled, "Cost and Quality of Fuels for Electric Utility Plants," which contains quality, price and volume data for fuel delivered to steam-electric plants. To derive a Btu per barrel figure, DOE used the EIA-reported data for January–March 1980, on the average price per barrel and per MMBtu of *all* fuel oil and the following standard formula for determining the average Btu's per barrel:

$$\text{Average Btu's per barrel} = \frac{\text{Average price (\$/bbl)} \times 10^6}{\text{Average price (\$/MMBtu's)}}$$

It appears that approximately 97% of fuel oil deliveries during January–March 1980 (upon which these price data were based) was No. 6 fuel oil. It also appears that the Btu content of a barrel of oil does not vary to a very significant degree over time. Therefore, DOE believes that the average Btu's per barrel of No. 6 fuel oil with 0.3% sulfur content (if it could be isolated in the data) would not vary significantly from the average Btu content of a barrel of fuel oil during January–March 1980. That average was 6.11 million Btu's per barrel.

Conclusions: The price range reported by Platt's for June 30, 1980, for imported No. 6 fuel oil with 0.3% sulfur content was $32.75–$32.83 per barrel. The average price in this range is $32.79 per barrel. Given a Btu content of 6.11 million Btu's per barrel of 0.3% sulfur oil, the "standard support price", where the fuel displaced is not oil, is computed by dividing $32.79 by 6.11 which equals $5.37. If the fuel displaced is only oil, the standard support price is increased 25% to $6.71. If the fuel displaced is a mixture including oil, only the portion of the standard support price attributable to oil is increased by 25%. These conslusions are set forth in proposed § 485.21.

B. Establishing the Amount of Fuel Displaced by the Sale of Waste Derived Energy

Section 234(d)(7) of the ESA requires that "not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe by rule, the manner of determining the fuel displaced by the sale of any biomass energy . . ." Section 234(d)(6) further provides that "any biomass energy produced by a municipal waste energy project which may be retained for use by the owner or operator of such project shall be considered to be sold * * *" Section 234(d)(b) applies to waste-derived energy which is used to supply the internal energy requirements of the municipal waste energy facility. These requirements typically involve the use of steam or electric power to drive pumps, fans, and other process machinery which is integral to the operation of the facility and to supply housekeeping functions such as lighting and space heating needs. These energy requirements would have to be supplied with externally purchased energy if waste-derived energy were not used for this purpose. For reasons of plant economy and efficiency and resource conservation, the use of waste-derived energy for these purposes should be encouraged. The internal energy requirements of a waste energy facility have not been reported to exceed 20 percent of the energy output of existing waste energy faclities in this country and are typically less than 5 percent of total energy output.

For purposes of this rule, displaced fuels are oil, natural gas and coal because the intent of the ESA is to encourage alternative fuels production. Under Section 235(a)(1)(B), DOE is required to give preference to projects which displace oil and natural gas. Consistent with the ESA, DOE rules for the Municipal Waste Energy Price Support Loan Program will not provide for assistance to projects which displace fuels other than oil, natural gas, and coal, and will disfavor projects which displace coal consumption.

Waste derived energy can be produced in a variety of forms. It can be produced as solid, liquid, or gaseous fuel for firing in boilers. Alternatively, direct combustion of municipal waste or waste derived fuel in a boiler can produce waste derived energy, such as steam, to generate electricity which is then sold to end users or used internally in the operation of the municipal waste energy facility.

The proposed procedures will provide for calculation of the energy equivalent fossil fuel value for all types of waste derived energy. The relevant criteria used in deciding upon the procedures proposed in the rule include the following:

- The procedures should not favor any particular technology, and as such should convert any form of waste derived energy into a standard fuel equivalent value.
- The procedures must permit accounting for waste derived energy used in the internal operations of the facility as well as that which is sold, and as such, must accommodate the measurement of total energy produced and used, as well as sales data.
- The procedures proposed should be as simple and accurate as possible.
- The methods chosen should be consistent with standard engineering practices and procedures.

There are two separate methods for calculating the amount of conventional fossil fuel displaced by waste derived energy. The first method is used when a waste derived *fuel* displaces conventional fossil fuel. The second method is used when energy or steam (produced by the direct combustion of municipal waste or waste derived fuel) displaces conventional fossil fuels used to generate electricity, mechanical power, or industrial process heat.

Waste Derived Fuel. Municipal waste can be processed into various grades of solid, liquid, or gaseous fuels.

The purchaser of this waste derived fuel can fire it in a boiler designed specifically for that fuel or cofire it with other fuels in a conventional boiler. The heat content of the waste derived fuel is measured in Btu's per lb for solid fuel, Btu's per gal for liquid fuel, and Btu's per cubic foot for gaseous fuel. As stated in proposed § 485.22, the number of units of waste derived fuel sold or used is multiplied by the MMBtu's per unit to determine the amount of fossil fuel displaced, i.e.,

Fuel Displaced = (MMBtu's/unit) × (units sold or used internally)

Proposed § 485.22(b)(1) provides for two alternatives in determining the MMBtu's per unit of a specific waste derived fuel. Each alternative permits a different sampling and testing procedure. Sampling and testing is necessary because the municipal waste supply from which waste derived fuel is produced can vary in its chemical and physical properties over time, and thus, affect the quality of the waste derived fuel product. Periodic sampling and testing allows a statistically valid measure of MMBtu's per unit. The price support loan agreement between DOE and the project will specify one of the two alternatives.

Under the first alternative an applicant could propose the sampling and testing procedure specified in the project's waste derived fuel sales contract. However, the validity of this approach must be questioned because the contractually specified procedures may not reflect representative values. Under the second alternative DOE would determine the sampling and testing procedure, which could involve a sampling and testing procedure which is unique to the project or one which is recognized by a standard setting organization such as the American Society for Testing and Materials (ASTM). ASTM is in the process of developing a standard sampling and testing procedure.

Other Waste Derived Energy. If the waste derived energy sold or used is energy or steam produced from the direct combustion of municipal waste or waste derived fuel, and used to generate electricity, mechanical power or industrial process heat, proposed section 485.22(c) of the rule proposes a different method for estimating the amount of displaced fuel. This method converts these forms of waste derived energy into the Btu equivalent of the conventional fossil fuel input which would otherwise have been used. The procedure accounts for conversion losses when any fuel is fired in a boiler to produce a higher quality energy form such as steam. These conversion losses are estimated by taking into account the

efficiency of the boiler in converting Btu's of fuel input into Btu's of energy output. Typically, fossil fuel-fired boilers will operate in an efficiency range of 80 to 90 percent. Next, a given Btu fuel input will yield an output, in Btu's, of 80 to 90 percent of the Btu fuel input. DOE has selected 85 percent as a representative fossil fuel boiler efficiency. DOE believes that this value represents the average of the range of efficiencies at which well-maintained fossil fuel-fired boilers should operate.

It is necessary to set an efficiency value which is representative of fossil fuel-fired boilers because the actual efficiency of the refuse-fired boiler which produces the waste derived energy may be significantly below the range of fossil-fuel fired boiler efficiencies. This lower efficiency results from the properties of waste which make it a lower quality fuel than oil or gas, for example. It would be incorrect to use the lower operating efficiency of the refuse-fired boiler because this would result in a calculated figure showing a higher fossil fuel input value than should actually have been required to obtain the same energy output from a fossil fuel-fired boiler.

In calculating the amount of displaced fuel, it is also necessary to establish the energy content in MMBtu's of the waste derived energy product. Despite the difference in end products, there is a single point, common to all processes involving the direct combustion of waste or waste-derived fuel, at which the specific quantity of energy produced can be measured.

In all direct combustion processes, the energy content of a working fluid in a boiler (either steam or hot water), is raised by increasing its temperature and pressure and, thereby, its ability to do useful work. The fluid can be sold directly or converted into a product such as electricity for sale. In all cases, the temperature and pressure of the boiler fluid determines its enthalpy or energy content. For each combination of temperature, pressure, and working fluid, there is a unique enthalpy value, in Btu's per pound or Btu's per gallon, which can be determined by applying standard engineering practices. The change in enthalpy, determined by the difference in the temperature and pressure of the boiler fluid at entry and exit from the boiler, indicates the energy obtained from the combustion of fuel in the boiler.

The amount of waste derived energy from direct combustion is then calculated as the product of the change in enthalpy of the boiler fluid multiplied by either the pounds of steam or gallons of hot water generated by the boiler. Given this quantity, the amount of fossil fuel displaced can be calculated by taking into account the efficiency of a boiler in converting fossil fuel input into steam or hot water. This is done by using the assumed 85 percent efficiency of a conventional boiler in the following equation:

$$\text{Amount of Fuel Displaced} = \frac{(\text{Quantity of Working Fluid})(h)}{.85}$$

Where h is the change in enthalpy.

There is one further adjustment needed to account for refuse-fired boilers which employ conventional fossil fuel input during startup or to maintain product quality and emissions control. In this instance, the Btu output must be reduced by the heating value of the fossil fuel consumed for those purposes. The equation is modified as follows:

$$\text{Amount of Fuel Displaced} = \frac{(\text{Quantity of working fluid})(h)}{.85} - (\text{Quantity of fossil fuel used})(\text{MMBtu's/unit}),$$

Where MMBtu's/unit is the higher heating value measured in MMBtu's per pound, MMBtu's per gallon or MMBtu's per cubic foot, as appropriate for the fossil fuel used.

The quantity of fluid produced and the change in enthalpy is to be calculated from the metered records of boiler operation.

C. Establishing the Cost of Fuel Displaced

Section 234(d)(5) of the ESA defines "the cost of fuel displaced" as "the cost of the fuel (per MMBtu's) which the purchaser of biomass energy would have purchased if the biomass energy had not been available for sale to that purchaser." Section 234(d)(7) of the ESA provides that "the Secretary shall prescribe by rule the manner of determining . . . the price of the fuel displaced."

In developing this part of the proposed rule, the following factors were considered:

- The point or points in time at which the price of displaced fuel should be measured; and
- The procedure to be followed in calculating the price.

The point in time at which the price of displaced fuel is set affects the maximum amount of price support loan, because the maximum loan amount is based on the differential between the standard support price and the cost of fuel displaced. DOE believes that it is appropriate to establish the cost of fuel displaced at a point where actual cost figures are known because the incentive value of a price support loan is dependent on precise identification of the revenue stream, which might otherwise be a key uncertainty dissuading lenders from financing a project.

The proposed rule specifies a "base period" during which the cost of fuel displaced will be measured. That base period cost remains unchanged thereafter. DOE proposes to set the base period, during which the cost of fuel displaced is fixed, as any consecutive 12

months during the 18 month period that precedes a commitment to make a price support loan for a new municipal waste energy project.

A different time interval is proposed for an existing municipal waste energy project. In this case, the 12 months between July 1, 1979, and June 30, 1980, is the base period during which the cost of displaced fuel is determined. This interval was chosen because its terminal point is the date the value of the Standard Support Price was established under the ESA. It, therefore, bases the amount of price support assistance on the differential that existed between the standard support price and the cost of fuel displaced in the 12 months immediately prior to the enactment of the ESA.

The final issue addressed in this section is the proposed procedure for calculating the cost of fuel displaced.

There were two options considered in proposing this rule. Option 2 was ultimately selected.

Option 1. In this option the cost of the fuel displaced would be that cost specified in the waste derived energy sales contract. This approach would assume that the price paid for waste derived energy is related to the cost of purchasing a conventional fossil fuel alternative which the buyer would otherwise have had to pay. In fact, some existing sales contracts establish a base price of waste derived energy that reflects the prevailing price of a fossil fuel which the buyer would otherwise have used, and then provide for escalation of that base price over time as a function of the rate of escalation in the market price of the fossil fuel displaced.

One difficulty with this procedure is lack of comprehensiveness. It is not always true that the base price for waste derived energy specified in a sales contract references a particular fossil fuel. The contract could, for example, specify a base price as a dollar per million Btu value which would escalate as a function of an index, such as the Consumer Price Index, which is not fuel specific. This may occur, for example, in situations where a buyer uses multiple fuels, several of which would be displaced by waste derived energy.

A further difficulty with the Option 1 approach is that it could affect negotiations of the waste derived energy sales contract and result in a contract which has an artificially low cost of fuel displaced. DOE does not believe price support loans should have any influence on negotiations to establish the price of waste derived energy in sales contracts.

For the above reasons, the Option 1 approach was rejected.

Option 2. Option 2 defines the cost of fuel displaced for a single conventional fossil fuel as the total cost per unit of that fuel to the energy buyer or user divided by the MMBtu's per unit of that fuel. Option 2 defines the cost of fuel displaced for a mix of conventional fossil fuels as the weighted average cost per MMBtu's of the mix of the fuels used by the energy buyer or user during the "base period" to supply the energy requirements which are or will be supplied with waste derived energy. The cost of the fuel displaced is the weighted average cost, in dollars per MMBtu's, of the fuel mix. Costs will be established from the energy buyer's or user's accounting records for fossil fuel purchases during the "base period." If the waste derived energy purchaser or user cannot provide 12 months of historical accounting data for the base period, the cost of fuel displaced will be determined as the weighted average price of industrial boiler fuel used in the region of the buyer's or user's facility. DOE requests comments regarding sources of such data. In contrast with Option 1, this approach permits an objective determination, on the basis of historical records, of both the cost and the identity of the displaced fuel. Another advantage of this option is that it permits a potential applicant to estimate, prior to applying to DOE for price support assistance, the maximum amount of possible price support assistance. A potential applicant would then have a basis for deciding whether to apply for such assistance.

In accordance with Section 235(a)(6)(D), DOE intends to seek comment on how to limit financial assistance to an amount which is no greater than necessary to promote energy recovery from municipal waste. As proposed, the price support loan payments could exceed project requirements in a case where energy revenues increase faster than expected; DOE plans to propose an approach to deal with this issue in the notice of proposed rulemaking which will cover the remaining components of the Municipal Waste Energy Price Support Loan Program.

IV. National Environmental Policy Act Review

DOE published a notice of availability of an environmental assessment (EA) (DOE/EA–0095) and negative declaration in the **Federal Register** on July 18, 1979 (44 FR 42110) stating that the Department's overall urban waste program (covering municipal waste other than industrial waste) would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* DOE has reviewed this EA and negative declaration and has concluded that the analyis in the EA and the negative declaration (i.e., the finding of no significant impact) are applicable to this rulemaking.

Industrial waste, which is included in the ESA's definition of municipal waste, is not covered by the urban waste EA. Therefore, DOE is preparing a separate industrial waste EA, which is expected to support (1) a finding of no significant impact (FONSI) as to certain industrial waste processess and (2) a determination that, as to other industrial waste processes, environmental impacts could be significant and, therefore, that a programmatic EIS would be required. Consequently, in the near term, price support loans would be available only for those technologies with impacts that are environmentally not significant under NEPA, as determined by the final EA and a FONSI. (These technologies may include those using waste wood, waste paper and food process waste which do not constitute agricultural or forest wastes.) Following completion of a programmatic environmental impact statement (EIS) concerning industrial waste, DOE may amend the rule to permit issuance of price support loans for additional technologies covered in the EIS. Should the EA not support a FONSI for any industrial waste processes, all price support loans for industrial waste processes would be deferred until EIS completion. However, since there could be site-specific environmental impacts of concern, site-specific environmental information will be required from the applicant, and the preparation of formal site-specific environmental assessments or environmental impact statements may be required, where appropriate. DOE will determine the nature and extent of any additional environmental review required by NEPA for individual applicants prior to issuing a price support loan for a municipal waste energy project. In addition to the environmental analyses referred to above, DOE will, of course, evaluate (and point score) the environmental aspects of each proposal.

V. Review Under Executive Order 12044 and OMB Circular A–116

Today's proposal was reviewed under Executive Order 12044, 43 FR 12661, implementing DOE directives thereunder and OMB Circular A–116. DOE has determined that the rule will be

"significant" because of its widespread impact. However, DOE has concluded that it will not be "major" because it will not have the kind or degree of effects which, under Executive Order 12044, necessitate a regulatory analysis. For the same reason, an urban and community impact analysis under OMB Circular A–116 is not necessary.

VI. Period for Public Comment

In light of the 90-day statutory deadline for issuing rules under section 234(d) of the ESA, DOE has determined that it would be inappropriate to delay final issuance of this rulemaking any longer than is absolutely required to allow a minimally adequate period for public comment. Accordingly, a 30-day comment period rather than the usual 60-day period is being provided for public review and comment on this proposed rulemaking.

VII. Comment and Hearings Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's proposed rule. Comments must be submitted by (30 days from date of publication), to the address indicated in the beginning of this preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designtion—Price Support Loan Proposed Rule (Docket No. CAS–RM–80–121)." Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 5B–180 Forrestal Building, 1000 Independence Avenue, SW., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Request Procedures

The time and place of the public hearings are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before September 29, 1980 and may be hand-delivered to such address, between the hours of 9:00 a.m. and 4:30 p.m.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day.

DOE will notify each person selected to appear at the hearings before October 6, 1980. Each person selected to be heard should bring 15 copies of his or her statement to the hearing location.

C. Conduct of Hearings

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearings. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination. At the conclusion of all initial oral statements, each person who has made an oral statement will, if time permits, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be asked.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made, and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 5B180 Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Authority: Energy Security Act, Pub. L. 95–91.

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10, Code of Federal Regulations, by establishing Part 485 as set forth below.

Issued in Washington, D.C. September 18, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

10 CFR Chapter II is proposed to be amended as follows:

PART 485—MUNICIPAL WASTE ENERGY PRICE SUPPORT LOAN PROGRAM

Subpart A—General

Sec.

485.01 Purpose.
485.02 Definitions.
485.03–485.19 [Reserved].

Subpart B—Formula for Loan Disbursements

485.20 Purpose.
485.21 Standard support price.
485.22 Fuel displaced.
485.23 Cost of fuel displaced.
485.24 Loan term and declining annual disbursements.

Authority: Energy Security Act, Pub. L. 96–294; (42 U.S.C. 8831–8840) Department of Energy Organization Act, Pub. L. 95–91.

Subpart A—General

§ 485.01 Purpose.

This part is established for the program rules authorized for the Municipal Waste Energy Price Support Loan Program under Title II, Subtitle B, of the Energy Security Act.

§ 485.02 Definitions.

As used in this part, the term—

"base period" means any consecutive 12 months during the 18 month period that precedes a commitment to make a price support loan, for a *new* municipal waste energy project, and the 12 consecutive month period between July 1, 1979 and June 30, 1980, for an *existing* municipal waste energy project.

"biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal wastes, and aquatic plants.

"Btu" means British thermal unit, the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit at or near 37.2°F.

"displaced fuel" means a conventional fossil fuel i.e., oil, natural gas, or coal, which the purchaser or user of waste derived energy would have otherwise purchased or used to supply energy requirements which are or will be supplied by waste derived energy.

"DOE" means the Secretary of Energy or his designee.

"enthalpy" means the internal energy of a system plus the product of the volume and pressure exerted on the system by its surroundings.

"existing municipal waste energy project" means any municipal waste energy project which is not a new municipal waste project.

"higher heating value" means the heat content of a fuel when all water vapor in combustion-produced gases is condensed.

"MMBtu" means one million British thermal units.

"municipal waste" means any organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse from any publicly or privately operated municipal waste collection or similar disposal system, from similar waste flows (other than such flows which constitute agricultural wastes or residues or wood wastes or residues from wood harvesting activities or production of forest products). Such term does not include any hazardous waste specifically listed in 40 CFR Part 26, or which when utilized in any municipal waste energy project would, in the opinion of DOE, endanger the public health or negatively impact the environment in a significant way.

"municipal waste energy project" means any facility (or portion of a facility) located in the United States primarily for the production of waste-derived fuel (and by-products) from municipal waste or the combustion of municipal waste for the purpose of generating steam including industrial process heat, mechanical power, electricity, (including cogeneration). Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

"new municipal waste energy project" means any municipal waste energy project which is initially placed in service after June 30, 1980; or if initially placed in service before June 30, 1980, has an increased capacity by reason of additional construction, and as such is placed in service after such date.

"placed in service" means operated at more than 50 percent of the estimated operational capacity at which the facility was designed to operate.

"project" means a municipal waste energy project.

"refuse-fired boiler" means a boiler in which greater than 50 percent of the heat content of the fuel used is supplied by the direct combustion of waste or waste-derived fuel.

"unit value of support" means the lesser of $2.00 per MMBtu's or the standard support price as determined under § 485.24 minus the cost of fuel displaced as determined under § 485.23.

"Waste derived energy" means energy which is waste derived fuel, or energy or steam derived from the direct combustion of municipal waste or waste derived fuel for the generation of electricity, mechanical power, or industrial process heat.

"Waste derived fuel" means any gaseous, liquid, or solid fuel produced solely from municipal waste.

§ 485.03–485.19 [Reserved].

Subpart B—Formula for Loan Disbursements

§ 485.20 Purpose.

The purpose of this subpart is to state the method for determining the maximum amount of price support loan assistance under this part.

§ 485.21 Standard Support Price.

(a) If the conventional fossil fuel displaced is not oil, the "standard support price" is the average price (per MMBtu's) for No. 6 fuel oil imported into the United States on June 30, 1980, which was $5.37 per MMBtu's.

(b) If the conventional fossil fuel displaced is oil, the standard support price is 125% of the price under paragraph (a) of this section which equals $6.71 per MMBtu's.

(c) If the fuel displaced is a mix of conventional fossil fuels including oil, the standard support price is the standard support price under paragraph (a) of this section, increased by 125% in direct proportion to the amount of oil in the conventional fossil fuel mix according to this formula:

$$O] + (.25) \times \frac{Oil}{Oil+Gas+Coal} \times \text{Standard Support Price}$$

Where Oil, Gas, and Coal represent the MMBtu's of oil, natural gas, or coal in the fuel mix.

§ 485.22 Fuel Displaced.

(a) The amount of conventional fossil fuel displaced shall be calculated under the method described in:

(1) Paragraph (b) of this section if the end product sold or used from a project is waste derived fuel, or

(2) Paragraph (c) of this section if the end product sold or used is waste derived energy (other than waste derived fuel).

(b) *Fuel Displaced By Waste Derived Fuel.* The amount of fuel displaced, as expressed by the following formula, equals the MMBtu's per unit of waste derived fuel multipled by the number of units of waste derived fuel sold or used: Fuel Displaced = [MMBtu's/unit X (Units sold or used)].

(1) As determined by DOE, the MMBtu's per unit of waste derived fuel shall be established by one of the following standardized sampling and testing methods:

(i) The sampling and testing method negotiated and established in the fuel purchase agreement between the project seller and the waste derived fuel buyer, or

(ii) An independent sampling and testing method selected by DOE.

(2) The number of units of waste derived fuel sold or used in the operation of the facility (as measured in pounds, gallons, or cubic feet) shall be established by records certified in accordance with the Price Support Loan Agreement which show sales and use for the 12 month period for which the price support loan payments are made.

(c) *Fuel Displaced by Waste Derived Energy (Other Than Waste Derived Fuel).* The amount of fuel displaced, as expressed by the following formula, equals the quantity of boiler fluid sold or used, multiplied by the change in enthalpy, divided by .85, which is the boiler efficiency value. Subtracted from this value are any MMBtu's of fossil fuel used in the refuse fired boiler:

$$\text{Fuel Displaced} - \frac{[(\text{Quantity of boiler fluid sold or used}) \times h)]}{.85}$$

– [(Quantity of fossil fuel used)×(MMBtu's/unit)]

Where:

(1) The quantity of boiler fluid is to be measured in pounds, gallons, or cubic feet.

(2) The MMBtu's/unit is the higher heating value of the fossil fuel used.

(3) Change in enthalpy of the boiler fluid is to be calculated by standard engineering practices.

§ 485.23 Cost of fuel displaced.

(a) If the fuel displaced is a single conventional fossil fuel, the cost of fuel displaced is the average base period cost per unit of that fuel divided by the MMBtu's per unit of that fuel.

(b) If the fuel displaced is a mix of conventional fossil fuels, the cost of fuel displaced is the weighted average base period cost in dollars per MMBtu's of the mix of conventional fossil fuels, as expressed by the following formula:

$$\text{Cost of Fuel Displaced} = \frac{(\text{Oil} \times \$/\text{MMBtu}_{\text{Oil}}) + (\text{Gas} \times \$/\text{MMBtu}_{\text{Gas}}) + (\text{Coal} \times \$/\text{MMBtu}_{\text{Coal}})}{\text{Oil} + \text{Gas} + \text{Coal}}$$

Where:

(1) Oil is units of oil in MMBtu's;

(2) Coal is units of coal in MMBtu's,

(3) Gas is units of gas in MMBtu's.

(c) The applicant shall submit to DOE certified records of each waste derived energy buyer's or user's consumption of each type of fossil fuel fuel for the project's "base period." These records shall identify, for each type of fuel, the average MMBtu's per unit of fuel consumed in the base period. The fuels reported should be limited to those for which requirements are or will be supplied by waste derived energy.

(d) The applicant shall provide certified accounting data for each waste derived energy buyer's or user's average base period cost for each type of conventional fossil fuel. These data shall be used to calculate an average dollars per MMBtu's cost for each fuel.

(e) If a buyer or user of waste derived energy has no "base period" data, the cost of fuel will be calculated as the weighted average price per MMBtu's of industrial boiler fuels for the region in which the consuming facility is located.

(f) If the buyer or user of the waste derived energy is a utility, the cost of fuel displaced shall be calculated for all conventional fossil fuels used in its generating plants.

§ 485.24 Loan term and declining annual disbursements.

(a) The following procedures shall be used for calculating the maximum amount of the annual price support loan payment to a project.

(1) The maximum term which loan payments are made to a project by DOE is:

(i) 5 years where payment is made to an existing municipal waste energy project.

(ii) 7 years where payment is made to a new municipal waste energy project.

(2) The maximum payment for the first year is the unit value of support multiplied by the number of units of waste derived energy sold or used as determined under § 485.22.

(b) For each succeeding year, the maximum amount of the price support payment is the product of the unit value of support (as defined by § 485.02) the number of units of waste derived energy sold or used during the year for which the disbursement is made (as determined under § 485.22), and a fraction in which the numerator is the term of the loan minus the years elapsed and the denominator is the term of the loan, i.e,

Price Support Payment=[Unit value of Support]×[Fuel displaced]

$$\text{Price Support Payment} = [\text{Unit value of Support}] \times [\text{Fuel displaced}] \times \frac{[\text{term of loan} - \text{years elapsed}]}{\text{term of loan}}$$

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

Rules Going Into Effect Today

PERSONNEL MANAGEMENT OFFICE

56793 8–26–80 / Pay under other systems

List of Public Laws

Last Listing September 23, 1980

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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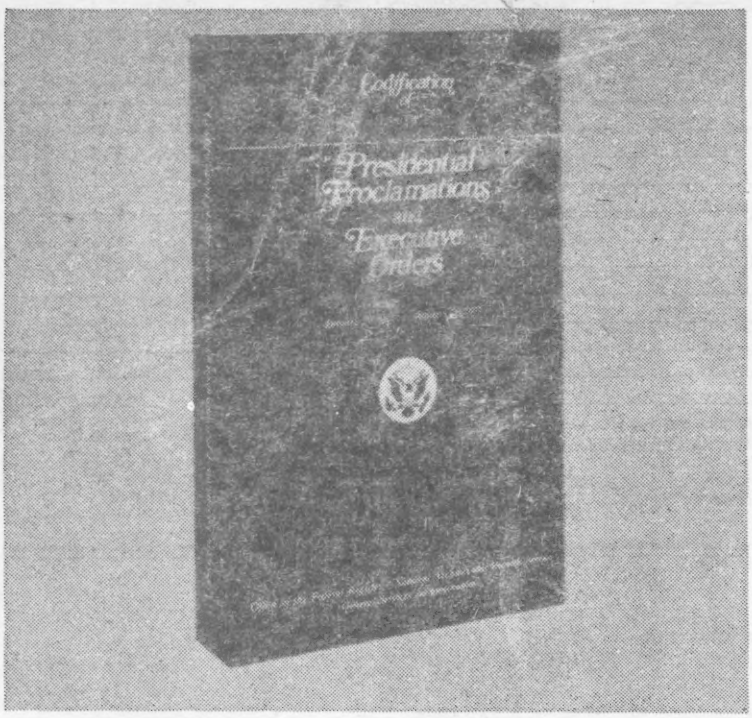

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